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30/10/07

HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition No. 5682 of 2005

Kishore Kumar Vyas

Vs.

State of Chhattisgarh and others

POST FOR ORDER 29-10-2007

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition No. 5682 of 2005

Petitioner

Kishore Kumar Vyas, aged about 55 years, S/o. Late Shri Jatashankar Vyas (recently virtually compulsory retired by wrong acceptance of application for voluntary retirement) Chief Engineer (Generation) Chhattisgarh State Electricity Board, Daganiya District Raipur (Chhattisgarh)

Versus

Respondents

1 State of Chhattisgarh through Secretary, Department of Energy, D.K.S.Bhawan, Mantralaya, Raipur (Chhattisgarh).

2 Chhattisgarh State Electricity Board through the Chairman Daganiya, Raipur District Raipur (Chhattisgarh).

3 Secretary, Chhattisgarh State Electricity Board, Daganiya, Raipur (Chhattisgarh).

(Writ Petition under Article 226/227 of the Constitution of India.)

SB: Hon'ble Mr. Satish K. Agnihotri, J.

Present: Shri Jitendra Pali, counsel for the petitioner.
Shri Vinay Harit, Deputy Advocate General for the respondent No.1/State.
Shri A.S. Gaharwar, counsel for the respondents No. 2 & 3.

ORDER

(Passed on 29th October, 2007)

By this petition, the petitioner seeks a writ of certiorari to quash the impugned order dated 19-9-2005, whereby the application of the petitioner to retire voluntarily from services with effect from 31-10-2005, was granted, despite the fact that the petitioner had by his

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subsequent letter dated 8-9-2005 requested the respondents/authorities to withdraw his application dated 30-7-2005.

2) The indisputable facts, which are in narrow compass, are that the petitioner, who was working as Chief Engineer (Generation) in Chhattisgarh State Electricity Board (hereinafter referred to as CSEB"), made an application on 30-7-2005 (Annexure P/1) to the respondents/Board requesting for voluntary retirement from services with effect from 31-10-2005. On 8-9-2005 the petitioner submitted second application (Annexure P/2) seeking withdrawal of the earlier application dated 30-7-2005 (Annexure P/1) on the ground that his health has improved and he would be able to serve very soon. The respondents/Board accepted the application of the petitioner dated 30-7-2005 (Annexure P/1) on 19-9-2005, permitting the petitioner to retire voluntarily from services with effect from 31-10-2005. The petitioner, thereafter, again made two representations dated 25-10-2005 (Annexure P/4) and 5-11-2005 (Annexure P/5) requesting the respondents/Board to cancel the order dated 19-9-2005 in view of the fact that prior to acceptance of his application for voluntary retirement from services; the petitioner had withdrawn the same on 8-9-2005.

3) Shri Jitendra Pali, learned counsel appearing for the petitioner submits that it is well settled that before the application for voluntary retirement comes into effect, an employee is at liberty to withdraw the same. In the facts situation of the case, before the application dated 30-7-2005 (Annexure-P/1) was allegedly accepted on 19-9-2005, the petitioner had made an application on 8-9-2005 to withdraw the earlier application dated 30-7-2005. Thus, the order dated 19-9-2005 impugned herein is contrary to law and deserves to be quashed.

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4) Per contra, Shri A.S. Gaharwar, learned counsel appearing for the respondents No. 2 and 3 relies on Clause 6 of the Voluntary Retirement Regulations, 1989 (hereinafter, referred to as "the Regulations"), in support of his contention that under the provisions of the Regulations, once the petitioner has exercised his option for voluntary retirement, the same shall be final and the petitioner would not be permitted to make second application for withdrawal of the earlier application for voluntary retirement. He further contended that the letter dated 30-7-2005 (Annexure P/1) was accepted before the subsequent letter dated 8-9-2005 (Annexure P/2) for withdrawal of the earlier application dated 30-7-2005 (Annexure P/1) on 6-9-2005. He has produced record and proceedings in support of his contention.

5) I have heard learned counsel for the parties, perused the pleadings and documents appended thereto. It is evident that the petitioner made an application for voluntary retirement on 30-7-2005 (Annexure P/1) which was made effective from 31-10-2005, thereafter; he made second application on 8-9-2005 withdrawing the first application. The respondents/Board accepted the application of the petitioner for voluntary retirement on 19-9-2005.

6) The issue involved in this petition is no longer *res integra*. Clauses 3 and 6 of the Voluntary Retirement Regulations, 1989 read as under:

> "3. (i) All permanent employees (class I, II, III & IV) who have completed 15 years, continuous qualifying service or more shall have an option for voluntary retirement before they attain the normal age of superannuation by giving three months notice to the appointing authority.

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(ii) It shall be open to the Board either to accept or reject the option exercised by an employee under regulation 3(i) in individual cases.

(iii) The weightage upto 5 years will be added to the qualifying service of the employee who is retired voluntarily provided that

(a) the total qualifying service including weightage does not exceed thirty three years;
(b) the period does not go beyond the date of normal superannuation; and

(c) the weightage is used only for the purpose of reckoning qualifying service for pension/gratuity and does not confer any other benefit like notional increase in pay etc.

6. An option once exercised under these regulations, shall be final. Any defective or ambiguous exercise of option under these Regulations shall be considered as an exercise of option for the purpose of these Regulations".

7) In the matter of **Balram Gupta Vs Union of India and another**[1], Hon'ble the Supreme Court has held that the normal rule which prevails in certain cases that a person can withdraw his resignation before it is effective would not apply in full force to a case of this nature where the government servant cannot withdraw under the provisions of the Rules except with approval of such authority.

8) In the matter of **Power Finance Corporation Ltd., Vs. Pramod Kumar Bhatia,**[2] Hon'ble the Supreme Court has observed as under:

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> "**7**. It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. Since the order accepting the voluntary retirement was a conditional one, the conditions ought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme. Consequently, the order accepting voluntary retirement did not become effective. Thereby no vested right has been created in favour of the respondent. The High Court, therefore, was not right in holding that the respondent has acquired a vested right and, therefore, the appellant has no right to withdraw the scheme subsequently."

9) In the matter of **Srikantha S.M, Vs. Bharath Earth Movers Ltd**[3], Hon'ble the Supreme Court has observed at paras No. 25 and 26 which read as under:

> "**25**. In Shambhu *Murari Sinha Vs. Project and Development India Ltd., (Shambhu Murari Sinha II)*, the view taken in *Shambhu Murari Sinha I*, was reiterated. It was held that when voluntary retirement was withdrawn by an employee, he continued to remain in service. The relationship of employer and employee did not come to an end and the employee had *locus penitentiae* to withdraw his proposal for voluntary retirement. He was, therefore, entitled to rejoin duty and the Corporation was bound to allow him to work.
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> **26**. On the basis of the above decisions, in our opinion, the learned counsel for the appellant is right in contending that though the respondent Company

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had accepted the resignation of the appellant on 4-1-1993 and was ordered to be relieved on that day, by a subsequent letter, he was granted casual leave from 5-1-1993 to 13-1-1993. Moreover, he was informed that he would be relieved after office hours on 15-1-1993. The *vinculum juris*, therefore, in our considered opinion, continued and the relationship of employer and employee did not come to an end on 4-1-1993. The relieving order and payment of salary also make it abundantly clear that he was continued in service of the Company up to 15-1-1993."

10) In the matter of **HEC Voluntary Retd. Employees Welfare Society and another Vs. Heavy Engineering Corporation Ltd., and others**[4], Hon'ble Supreme Court held that unless a statute or statutory provision interdicts, the relationship between the parties to act pursuant to or in furtherance of the voluntary retirement scheme is governed by contract.

11) In the matter of **Ashok Kumar Sahu Vs. Union of India and others,**[5] Hon'ble Supreme Court has divided the cases of voluntary retirement broadly into three categories as under:

"**29**. Cases of voluntary retirement can broadly be divided into the following three categories:

(i) where voluntary retirement is automatic and comes into force on the expiry of notice period;

(ii) when it comes into force, unless an order is passed within the notice period withholding permission to retire; and

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(iii) When voluntary retirement does not come into force unless permission to this effect is specifically granted by the controlling authority.

32. We may observe that an appropriate order should be passed within a reasonable period. Normally, three months' notice is required to be given as the said period is considered to be reasonable and it is expected that a decision would be taken within the said period. But the rule is not an inflexible one. It would depend upon the facts and circumstances of each case."

12) In the matter of **Union of India Vs. Gopal Chandra Misra**[6], the constitution Bench of the Hon'ble Supreme Court has observed at para 50 which reads as under:

"50. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office –tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant/or functionary/who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under proviso (a) to Article 217 (1) has a unilateral right or privilege to resign his office, his resignation

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becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns *in praesenti,* the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal."

13) In the matter of **Union of India and another Vs. Wing Commander T. Parthasarathy**[7], Hon'ble Supreme Court has observed at para 8 which reads as under:

"8. So far as the case in hand is concerned, nothing in the form of any statutory rules or any provisions of any Act has been brought to our notice which could be said to impede or deny this right of the appellants. On the other hand, not only the acceptance of the request by the headquarters, the appropriate authority, was said to have been made only on 20-2-1986, a day after the respondent withdrew his request for premature retirement but even such acceptance in this case was to be effective from a future date namely 31-8-1986, Consequently, it could not be legitimately contended by the appellants that there was any cessation of the relationship of master and servant between the [8]Department and the respondent at

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any rate before 31-8-1986. While that be the position inevitably the respondent had a right and was entitled to withdraw or revoke his request earlier made before it ever really and effectively became effective."

14) Clause 3 of the Regulations provides for the employees to opt for voluntary retirement before they attain the age of superannuation by giving three months notice to the appointing authority. Clause 6 of the Regulations provides that once option has been exercised under the Regulations, the same shall be final. Any defective or ambiguous exercise of option under these Regulations shall be considered as an exercise of option for the purpose of these Regulations.

15) The petitioner made an application expressing his desire to take voluntary retirement giving three months notice from the date of application on 30-7-2005 to make it effective from 31-10-2005. Exercise of option cannot be held as complete on 30-7-2005 as the petitioner has requested for permitting him to take voluntary retirement with effect from 31-10-2005. Thus, it cannot be held that the process of exercise of option is complete before 31-10-2005. The "exercise of an option" has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edition, 2005 (page - 1711) as under:

"Exercise of an option - Exercise of an option means enforcing the right by the buyer/holder available under the option contract of buying or selling the underlying asset at the Strike Price."

16) The jural relationship of the employee and the employer comes to an end on 31-10-2005. The exercise of an option becomes effective with effect from 31-10-2005. There was no cessation of relationship of

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master and servant between the respondent –authority and the petitioner had a right to revoke his request earlier made before it ever really and effectively became effective in the present case i.e., 31-10-2005. Thus, the impugned order dated 19-9-2005 is unjust and improper and the same deserves to be and is quashed.

17) As a result, this petition is allowed with consequential relief flowing from this order. Cost easy.

Sd/-
Satish K. Agnihotri
Judge

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[1] 1987 (Supp) SCC 228
[2] (1997) 4 SCC 280
[3] (2005) 8 SCC 314
[4] (2006) 3 SCC 708
[5] (2006 6 SCC 704
[6] (1978) 2 SCC 301
[7] (2001) 1 SCC 158

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